

MACOMB TOWNSHIP ZONING BOARD OF APPEALS  
MINUTES OF A REGULAR MEETING HELD ON  
SEPTEMBER 13, 2005

LOCATION: MACOMB TOWNSHIP MEETING CHAMBERS  
54111 BROUGHTON ROAD, MACOMB, MI 48042

PRESENT: CHAIRMAN, BRIAN FLORENCE  
MEMBERS: EDWARD GALLAGHER  
TONY POPOVSKI  
VICTORIA SELVA  
DAWN SLOSSON

ABSENT: NONE

ALSO PRESENT: COLLEEN O'CONNOR, TOWNSHIP ATTORNEY  
JERRY SCHMEISER, PLANNING CONSULTANT  
(Additional attendance record on file with Clerk)

Call Meeting to Order.

Chairman FLORENCE called the meeting to order at 7:00 P.M.

1. Roll Call.

Secretary SLOSSON called the Roll Call. All members present.

2. PLEDGE OF ALLEGIANCE.

3. Approval of Agenda Items. *(with any corrections)*  
*Note: All fees have been received and all property owners were notified by mail*

**MOTION by SELVA seconded by GALLAGHER to approve the agenda as presented.**

**MOTION carried.**

4. Approval of the previous meeting minutes:

**MOTION by POPOVSKI seconded by SLOSSON to approve the meeting minutes of August 3, 2005 as presented.**

**MOTION carried.**

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PURPOSE OF HEARING:

To consider the requests for variance(s) of Zoning Ordinance No. 10 for the following:

| Agenda Number/Petitioner/ Permanent Parcel No.                    | Zoning Ordinance Section No.           |
|---|--|
| (5) Peter and Corrina Freeman<br>Permanent Parcel 08-17-251-003   | Section 10.0504(E)(3)<br>10.0504(A)    |
| (6) Phillips Sign and Lighting<br>Permanent Parcel 08-28-101-010  | Section 10.1065(I)(3)                  |
| (7) Ed Mephram<br>Permanent Parcel 08-30-102-001                  | Section 10.1605(6)(C)                  |
| (8) Sims Road, LLC<br>Permanent Parcel 08-20-100-018              | Section 10.0347                        |
| (9) Russell Branham<br>Permanent Parcel 08-05-127-039             | Section 10.0704(B)(2)                  |
| (10) Franco C. Mancini<br>Permanent Parcel 08-06-200-046          | Section 10.0345(3)(A)<br>10.0704(D)(1) |
| (11) Jack and Darlene Altermatt<br>Permanent Parcel 08-07-200-012 | Section 10.0330                        |
| (12) Mary Ann Barnes<br>Permanent Parcel No. 08-22-103-007        | Section 10.0704(B)(3)<br>10..0704(E)   |

5. VARIANCE FROM THE PROVISION OF THE ZONING ORDINANCE;  
Permission to vary section:  
Section 10.0504(E)(3) Request to reduce rear yard from 50' to 25'.  
Section 10.0504(A) Request to reduce minimum lot area from 30,000 square feet to 17,300 square feet.  
Located on West side of Romeo Plank Road, approx. 1/2 mile South of 24 Mile Road; Section 17; Peter and Corrina Freeman, Petitioner. Permanent Parcel No. 08-17-251-003.

Chairman FLORENCE read the findings and recommendations of September 8, 2005. They are as follows:

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The matter was considered by the Zoning Board of Appeals at its meetings of May 10, 2005 and July 12, 2005, and was tabled at the request of the petitioner.

The petitioner is requesting variances from the provisions of the R-1-S zoning district to reduce the depth of the lot and the rear yard setback to have existing lot and structures property varianced for future building permits. The property is zoned R-1-S.

The property is trapezoidal in shape with the house situated parallel to Romeo Plank. The front yard setback from the center line of Romeo Plank is 78'. The zoning ordinance requires a 90' setback. The rear yard is 29' and the zoning ordinance requires 50' in an R-1-S zone. The parcel contains approximately 14,750 square feet including the right of way for Romeo Plank.

**RECOMMENDATION:**

It is recommended that the variance request be denied for the following reasons:

1. Compliance with the strict letter of the setback requirements would not unreasonably prevent the ownership from using the property as zoned. Other residential structures planned in Macomb Township will be required to comply with the same setback requirements which are evidence that the proper setbacks would not be unnecessarily burdensome. The garage wing of the residence is already encroaching in the required rear yard setback and the front of the house is encroaching in the required front yard setback.
2. The granting of a variance as requested would give to the applicant an advantage or benefit not received by any other property owners in residential developments in Macomb Township. The other owners are or will be required to comply with the setback requirements. As a result the other property owners do not have the opportunity to make use of the required setbacks.

There is nothing unusual about the parcel in question that sets it apart from other parcels in area or in Macomb Township. There is nothing to prevent any part of the dwelling from maintaining the property setbacks. For example, there are no significant grade differences or natural feature such as a stream or wetland to prevent full use of the parcel according to the ordinance as written.

**MOTION by GALLAGHER seconded by SELVA to table the variance requests to November 8, 2005 as requested by the petitioner's letter dated September 7, 2005.**

**MOTION carried.**

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6. VARIANCE FROM THE PROVISION OF THE ZONING ORDINANCE;  
Permission to vary section:  
Section 10.1065(I)(3) Requesting a sign larger than 1/3 size of the ground sign.  
Located on Southeast corner of 22 Mile and Romeo Plank Roads; Section 28;  
Phillips Sign and Lighting, Petitioner. Permanent Parcel No. 08-28-101-010.

Chairman FLORENCE read the findings and recommendation of September 8, 2005. They are as follows:

The Board considered this matter at its meeting of July 12, 2005 but tabled at the request of the petitioner.

The petitioner is requesting allowance to provide 3 signs on a single parcel of property. The parcel involved is located on the southeast corner of 22 Mile and Romeo Plank Roads. The immediate corner which contains a hardware store, bar, and residence is not part of the petitioner's property.

Currently, a commercial strip center is being constructed on the site. The site plan for the Waldenburg Plaza was approved by the Planning Commission on March 16, 2004. The plan approved by the Planning Commission involves a strip center and a bank. The approved site plan noted 2 signs on the approved plan—one for the Warren Bank, fronting on Romeo Plank, and a second sign for the balance of the center fronting on 22 Mile Road.

The petitioner for the Waldenburg Plaza is now proposing 3 signs—one for the bank and 2 for the center (one each on Romeo Plank and 22 Mile Road). The Planning Commission was specific in approving the site plan with 2 signs—one for the bank and one for 22 Mile Road. The petitioner still has the option of providing 2 signs—one each on Romeo Plank (the bank could be advertised on the Romeo Plank sign) and one on 22 Mile Road. This would be typical as with other such centers—2 signs are allowed where the immediate corner is not part of the total project and would provide the visibility as noted by the petitioner.

The petitioner has commented in the accompanying letter that without the third sign, visibility will be limited. The Township Zoning Ordinance does not prohibit adequate signage since two signs, one on each road is allowed. But the petitioner is seeking the third sign since it is the proposal of the project to allow the Warren Bank to have its own free standing sign. It is further noted that bank is part of the site and therefore must comply with the requirements of the zoning ordinance.

Once again, the petitioner may opt to have 2 signs to provide the required visibility for the center.

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As noted above the petitioner indicates the need for the sign variance for visibility. The Consultant notes that the ordinance allows the second sign to provide the necessary visibility. (The petitioner wants 3 signs—2 for the center, and 1 for the bank.) The petitioner can develop 2 signs that are necessary for the visibility and could include the bank advertising on the second sign which would be located on Romeo Plank.

**RECOMMENDATION:**

It is recommended that the variance request be denied for the following reasons:

1. Compliance with the strict letter of the sign requirement, as approved by the Planning Commission, would not unnecessarily prevent the ownership from using the property as zoned. Other commercial centers planned in Macomb Township (those that have major road frontages and an excluded corner) will be required to comply with the same sign requirements which is evidence that the proper sign requirement would not be unnecessarily burdensome.
2. The granting of a variance as requested would give to the applicant an advantage or benefit not received by any other property owners in commercial centers developments in Macomb Township. The other owners are or will be required to comply with the sign requirements. As a result the other property owners do not have the opportunity to make use of 3 signs as proposed by the petitioner.

There is nothing unusual about the parcel in question that sets it apart from other parcels in area or in Macomb Township. There is nothing to prevent any part of the sign requirements from being maintained. For example, there are no significant grade differences or natural feature such as a stream or wetland to prevent full use of the parcel according to the ordinance as written.

3. The variance would amount to increasing the petitioner's signage by 50%.

It is noted that the petitioner refers to the property in question as a shopping center. Subject parcel has not, however, been determined to be a shopping center according to the criteria established in Sec. 10.1706 of the zoning ordinance. Since the parcel does not meet the criteria in Sec. 10.1706 the site for the purposes of sign review must be considered a multi-use center not a shopping center. Finally, the Township has interpreted the zoning ordinance as it relates to signage for multi-use centers to allow 2 signs where the immediate corner is not a part of the multi-use center; one sign on each street frontage. The petitioner is seeking 2 signs facing Romeo Plank and 1 sign facing 22 Mile Road.

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**MOTION by GALLAGHER seconded by SELVA to table the variance request to November 8, 2005 as requested by the petitioner's letter dated September 13, 2005.**

**MOTION carried.**

7. VARIANCE FROM THE PROVISION OF THE ZONING ORDINANCE;  
Permission to vary section:  
Section 10.1605I6C Request to increase square footage of a sign from 32 square feet to 64 square feet.  
Located on the Southeast corner of 21 Mile and Hayes Roads; Section 30; Ed Mephram, Petitioner. Permanent Parcel No. 08-30-102-001.

Chairman FLORENCE read the findings and recommendations of September 8, 2005. They are as follows:

The petitioner is requesting allowance to provide a sign for a proposed polish market. The proposed sign is 64 square feet. The zoning ordinance allows only 32 square feet. The property is zoned C-2.

**RECOMMENDATION:**

It is recommended that the variance request be denied for the following reasons:

1. Compliance with the strict letter of the sign ordinance requirement would not unreasonably prevent the ownership from using the property as zoned. Other commercial centers planned in Macomb Township will be required to comply with the same size requirements, which is evidence that the sign size would not be unnecessarily burdensome.
2. The granting of a variance as requested would give to the applicant an advantage or benefit not received by any other property owners in commercial center developments in Macomb Township. The other owners are or will be required to comply with the sign size requirement. As a result the other property owners do not have the opportunity to make use of an additional 32 square feet of signage for their businesses.

There is nothing unusual about the parcel in question that sets it apart from other parcels in area or in Macomb Township. There is nothing to prevent any part of the sign from being maintained at 32 square feet. For example, there are no significant grade differences or natural feature such as a stream or wetland to prevent full use of the parcel according to the ordinance as written.

The variance would amount to increasing the sign size by approximately 100%.

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The following letter of explanation was submitted by the petitioner dated August 11, 2005 as follows:

- 1) Existing tenant signs within this complex have been approved as C-2 and 64 sq. ft. of sign area. Enforcement of a new "Multi Use" C-2 restricting this tenant sign to 32 sq. ft. would deprive the individual tenant of the same rights enjoyed by all the other tenants within the very same zoning district and shopping center.
- 2) All previous signs have been reviewed as C-2/64 sq. ft. for shopping center.
- 3) This condition is not self imposed. Township rule changes have created the hardship.
- 4) All other tenants already have 64 sq. ft. signs and approval of the variance request will not confer any special privileges."

Dean Downing, representative, was in attendance and stated the request was for relief of administrative rule that has denied the full benefit of the sign area. He indicated that his company has worked for approximately 15 years within this particular center and during that entire time it has been reviewed as a C-2 and 64 square feet. It wasn't until the submittal of this particular tenant's application that there has been any discussion about a 32 square foot limit within this center. Denying this tenant would be penalizing him because the existing signs are already 64 square feet. So, to take the largest tenant within the center and give him the smallest sign does not seem just. Lastly, he noted he was not sure what the multi use category entails, but that is what we are really talking about. C-2 is C-2 unless it's a multi use and that I can't explain to the Board.

Simone Mauro, owner of the center, stated the center has been existence for approximately 15 years and in the past it has always been considered as a commercial, shopping center, which under your Zoning Ordinance allows for a 64 square feet sign. Now, its interpreted that if you're a shopping center by definition you need to be larger than 50,000 square feet and that is where the miscommunication came into play. If you have an ordinance that says your not considered a shopping center unless your 50,000 square feet. This center is less than 50,000 square feet therefore; it does not fall into the category of shopping center. But it has always been looked at as a shopping center and all of the previous requests for signage have always been 64 square feet. He then presented pictures of the other business signs. He concluded that this would be a detriment to the business owner since he is combining 4 units within the plaza to create the new business. Each unit, if occupied separately would be allowed 32 square feet of signage for each unit. Mr. Mauro argued that perhaps additional signage could be granted based on those facts. Visibility is a necessity for a business to succeed.

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Dean Downing stated the size of the sign is usually relative to the store front and your ordinance does not allow for anything dealing with the store front. For example if you apply the strict code to this center the smallest unit would be allowed 32 square feet and the largest unit which consists of 4 units would be allowed 32 square feet. That creates an imbalance in itself, there is no recognition within the code to say that larger units should or could be allowed a larger sign.

Member SELVA stated that the issues of signs continually comes before this board continuously and that this board has requested that the sign ordinances be looked at by the Planning Commission and the Township Board of Trustees. The question before us is whether the size of the sign apply to the ordinance or zone as written today, which is 32 square feet. How the other signs were approved at 64 square feet, we are not exactly clear how that happened or if it is correct that they were allowed to be at 64 square feet and did not feel that statement was a really good argument in the petitioners favor.

Chairman FLORENCE stated that under the variance request section that you are requesting a variance from being Section 10.1605(I)(6)(c) that is the wall sign limitation (he then read the section from the Zoning Ordinance) and asked Mr. Schmeiser if he had any comments regarding the multiple use versus section b previous to it.

Jerome R. Schmeiser, Planning Consultant, stated that he did not.

Ed Mephram, petitioner, stated that when he leased the building he took it with one condition that it was in the center of the complex. We are actually the flagship of the complex being 44,000 square feet. There are units existing that are 1,000 square feet with 64 square feet of signage and does not know how that came about. He went on to indicate that when you're driving on Hayes Road you would clearly be able to see the larger signs and most likely would not be able to read their 32 square foot sign.

Chairman FLORENCE stated the board has no comment regarding how the current signage got to be 64 square feet and can't address that issue at tonight's meeting. We do know the Zoning Ordinance says 32 square feet and that is why we are here tonight.

Public Portion:

Barb Tomaszewski, 47574 Valley Forge, stated she has lived in the community for 27 years and indicated that she did not understand what was going on. She noted that she attends every meeting in the Township and stated there problems within the Township. It does not take a rocket scientist to figure a 64 square foot sign versus a 32 square foot sign for a store consisting of 4 units. Lastly, she asked if the Township was trying to chase people out of the community or do you want them to come in.



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**MOTION by SLOSSON seconded by SELVA to close the public portion.**

**MOTION carried.**

Member GALLAGHER stated that he would have to deny the variance request since the Board must act on practical difficulty. That is the only time this body can act is when there is a practical difficulty being something that the Township has done that prevents you from doing this size sign. In other words and an ordinance change or something to that effect that restricts you from putting a sign up. That standard does not fit here. He also indicated that he felt that our ordinance has worked in the past and continues to work.

Member GALLAGHER suggested that the item be tabled to the next meeting of September 27, 2005.

Simone Mauro asked if the permits were found if the Board would allow the requested sign. He indicated that this would be the store owner's fourth (4<sup>th</sup>) store with the same type of signage that will not be allowed by this township but has been allowed in the past. There has never been a problem with the designation of the commercial shopping center, because it is what it is. Now, its being interpreted that you have to have 50,000 square feet before your defined as a shopping center. This is a shopping center. He then highlighted that a variance was granted to 23 Mile Road and Romeo Plank for the designation of a shopping center, which they are not 50,000 square feet. An application was filed and granted. Mr. Schmeiser stated then the petitioner must apply for and receive and Special Land Use Permit for them to be called a shopping center. That is fair to everybody. Mr. Mauro stated he then requested to be changed to a shopping center. Mr. Schmeiser stated that an application would need to be filed through a Special Land Use process to be considered by the Planning Commission.

Simone Mauro asked to table the variance request to the next meeting of September 27, 2005.

**MOTION by GALLAGHER seconded by SELVA to table the variance request as requested by the petitioner.**

Jerry Schmeiser, Planning Consultant, stated that if an item is not tabled to a date certain, the Clerk's Office has to renotify.

Colleen O'Connor, Township Attorney, stated that from a legal perspective the Board is not allowed to grant a sign on what you just said. The ZBA Board is not a board that can decide things on a case by case basis and to think that because another person, you should get it as well. They have to look at things from the perspective if there is not practical difficulty. The difficulty that you just asserted is not a difficulty, it has to be such that

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you could not use your property as zoned. That is what a practical difficulty is. It's not a practical difficulty that you can't see the sign from the road. The legal standard set by the court is that you would not be able to use your property as zoned. She indicated that the pictures that were presented, the board has no idea what the places have been designated.

**MOTION by GALLAGHER seconded by POPOVSKI to deny the variance request of Section 10.1065(I)(6)(c)-Request to increase square footage of a sign from 32 square feet to 64 square feet; Located on the southeast corner of 21 Mile Road and Hayes Road; Section 30; Ed Mephram, Petitioner. Permanent Parcel 08-30-102-001. The variance was based on the fact that there has been no demonstration of practical difficulty. Other businesses in the Township have been required to follow the ordinance and will be required to follow the ordinance and have done very well. If there has been sign permits granted by the Township we have no knowledge and to grant this variance would be giving a 100% increase over anybody else.**

**Member POPOVSKI stated he denied the variance based on the reasons given by the Planning Consultants and there has been no practical difficulty shown.**

**Member GALLAGHER stated no practical difficulty and other businesses in the Township have abided by the ordinance.**

**Member SELVA stated she denied the variance because its not in compliance with the ordinance as written.**

**Member SLOSSON stated she denied the variance since there is no practical difficulty the way the current ordinance is written.**

**Chairman FLORENCE stated he denied the variance on the grounds that there is no presented practical difficulty with this agenda item.**

Member SELVA stated that there are other boards and public comment periods for any one to discuss your comments on the idea for review the sign ordinance.

**MOTION carried.**

8. **VARIANCE FROM THE PROVISION OF THE ZONING ORDINANCE;**

Permission to vary section:

Section 10.0347 Request to reduce the distance for door openings facing an residential area from 600' to 100'.

Located on the south side of 23 Mile Road, 1/4 mile west of Romeo Plank Road; Section 20; Sims Road, LLC, Petitioner. Permanent Parcel No. 08-20-100-018.

Chairman FLORENCE read the findings and recommendations of September 8, 2005. They are as follows:

The petitioner is requesting allowance to develop industrial uses on property adjacent to residential areas without concern a zoning ordinance requirement that allows door openings facing the residential area to be reduced from 600' to 100'.

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The proposed subdivision abuts 2 residential developments. The Highland Hills condos to the east and the Walnut Creek Subdivision to the south. Both of these residential developments are affected by the 600' provision which prohibits industrial door openings that will megaphone noise that may be a disturbance to the residential occupants.

**RECOMMENDATION:**

It is recommended that the variance request be denied for the following reasons:

1. Compliance with the strict letter of the door opening requirement would not unreasonably prevent the ownership from using the property as zoned. Other industrial and commercial developments in Macomb Township will be required to comply with the door opening rule which is evidence that the 600' setback would not be unnecessarily burdensome.
2. The granting of a variance as requested would give to the applicant an advantage or benefit not received by any other property owners in commercial and industrial developments in Macomb Township. The other owners are or will be required to comply with the 600' setback requirement. As a result the other property owners do not have the opportunity to make use of the 600' reduction in the setback from a residential area.

There is nothing unusual about the parcel in question that sets it apart from other parcels in area or in Macomb Township. There is nothing to prevent any part of the 600' setback from being maintained from the property line. For example, there are no significant grade differences or natural feature such as a stream or wetland on the parcel in question to prevent full use of the parcel according to the ordinance as written.

3. The variance would amount to reducing the required 600' setback for door openings by approximately 84%.

The Planning Consultant suggests that the petitioner advise prospective industrial lot buyers that no openings are allowed and that their site plans should consider side entrance for their industrial developments.

The following letter of explanation was submitted by the petitioner dated August 15, 2005 as follows:

“Applicant’s site is located on the south side of 23 Mile Road, west of Romeo Plank. Current zoning classification for the site is M-1. Applicant’s request is relative to door and window openings in Commercial, Warehouse or Industrial Districts which abut residential property. Applicant seeks a variance from the recently-enacted Section

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10.0347 requirement that door and window openings abutting residential property be at least six hundred (600) feet from the property line. Property to the east of applicant's parcel is zoned R-2-L and is being utilized as Residential; property to the south is zoned AG and R-1.

At this time, since no buildings have yet been constructed, applicant's site meets the applicable setback requirements. However, the site cannot be developed in compliance with Ordinance Section 10.0347, as stated above. In the area where applicant's property abuts residential development, the site will still meet the setback requirement of one hundred (100) feet, but the site cannot feasibly meet the Section 10.0347 requirement regarding doors and windows.

Section 10.0347 sets forth the 600-foot requirement as follows:

**Sec. 10.0347. Door openings, distance from residential districts.**

In all Commercial, Warehouse or Industrial Districts where the respective zoning district line abuts and shares a common property line with parcel(s) zoned AG, or any other Residential zoning classification the building plan shall be restricted as follows:

Any building in the commercial, warehouse, or industrial district that is located on a parcel that shares a common property line with a parcel zoned for any residential classification shall not have any openings including windows other than required fire exit 'man doors' on the building elevation that faces the residential district if any part of the building is closer than six hundred (600) feet from the property line (Ord. No. 10-16, §1.1, 11-13-02; Ord. No. 10-18, §1,4-28-04) *Macomb Township Zoning Ordinance, Art. III, §10.0347*.

Applicant's property is approximately One Thousand Three Hundred Fifty (135)) feet wide, from East to West. Requiring strict compliance with Section 10.0347 effectively deprives Applicant of use of the property as zoned. A variance from the strict application of Ordinance Section 10.0347 is appropriate in this circumstance.

Variances regarding dimensions are non-use (or dimensional) variances. The applicable standard in such circumstances is that of a "practical difficulty." *National Boatland, Inc v Farmington Hills ZBA*, 146 Mich App 380, 387 (1985). Where a property owner might otherwise suffer a practical difficulty, a variance is properly granted. *Nat'l Boatland*, 387-388; *Norman Corp v City of East Tawas*, 687 NW2d 861, 867 (2004).

Township boards of appeals have authority to grant dimensional variances, per Michigan Statutes:

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Where there are practical difficulties or unnecessary hardship in the way of carrying out the strict letter of the zoning ordinance, the board of appeals in passing upon appeals may vary or modify any of its rules or provisions so that the spirit of the ordinance is observed, public safety secured, and substantial justice done. MCL 125.293.

The criteria applicable to dimensional variances are as follows:

- (a) Whether compliance with the strict letter of the ordinance would prevent the owner from using the property for a permitted purpose or would render conformity with the zoning restrictions unnecessarily burdensome.
- (b) Whether the variance would do substantial justice to the applicant and to other property owners.
- (c) Whether such relief can be granted in a way that the spirit and intent of the ordinance will be observed and substantial justice done. *National Boatland, supra*.

**Explanation of Applicant's Request**

As applied to Applicant's parcel, the requirement of door and window openings lying six hundred (600) feet from residential property creates a hardship, and the grant of a Variance from this Section is appropriate. Therefore, applicant's request is based upon the following:

- a. **Strict Compliance with §10.0347 is unreasonably burdensome, and creates a practical difficulty.**

Applicant faces a practical difficulty /unnecessary hardship due to the existing layout of the property. Property adjacent to the northeast is a facility belonging to the Nachi Machining Technology Co. ("Nachi"). Property to the east is zoned R-2-L and is being utilized as Residential.

This site existed as is, prior to the enactment of the current ordinance provisions of Section 10.0347. Applicant's proposed site plan allows for lots which would provide a separation of one hundred (100) feet from the neighboring residential development. To disallow doors and windows abutting residential, or requiring a distance of 600 feet will result in lots and buildings which are not marketable. Normal shipping a delivery occurs in the rear of an industrial building. Strict compliance with this Section effectively deprives Applicant of use of the site.

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2. **Conditions and circumstances are unique to this site in that both applicant's site and the adjacent residential property currently exist beside one another, and applicant will be deprived of use of the property if strict compliance with Section 10.0347 is required.**

Section 10.0347 calls for a 600-foot separation between the doors of applicant's building and the adjacent residential property. Because of the configuration of this property, requiring any doors or windows to be 600 feet from residential property is unreasonable and will not allow applicant full use of the site. Applicant's site is being used as zoned, as is the adjacent property. A grant of variance in this instance will allow applicant to utilize the site as planned, without any detriment to others.

3. **Conditions existing on Applicant's site were not created by the Applicant/Owner, nor by the predecessor in title; rather, the enactment of a new Ordinance provision creates a practical difficulty/unnecessary burden as applied to this site.**

The configuration of the property will not allow for the strict application of Ordinance Section 10.0347. Applicant must have access doors on the east side of its proposed buildings. However, leaving a 600-foot separation between the buildings and the property line effectively eliminates use of the majority of applicant's site. Applicant's property will still meet the setback requirement, and is further separated from the existing R-2-L property by the Denryter Drain, which is one hundred twenty (120) feet wide, as well as by existing evergreen trees. A variance will allow applicant to utilize the site.

3. **A grant of Variance will not confer special privileges to this Applicant, as other sites within this zoning district do not abut residential property.**

This applicant will not receive a special privilege if applicant's variance is granted. Other sites within this district are not similarly situated, in that they do not share the same configuration, and do not abut residential property. A grant of a variance in this instance will not confer a special privilege, but will uphold the spirit of the Ordinance and will do substantial justice. Macomb Township Ordinance Section 10.2101 describes the intent of the M-1 District as follows:

The purpose of this District is to provide for the development of light manufacturing and accessory activities which generally involve minimum obnoxious characteristics which would adversely affect surrounding non-industrial development . . . It is intended that these Districts be located with direct accessibility to a major street, highway, rail and other needed public utilities and services including fire protection services. . . §10.2101.

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Strict compliance with the current ordinance would deprive the applicant of use of the property, causing practical difficulty and unnecessary hardship, and would deprive applicant of rights currently enjoyed by other property owners. No special privileges will be conferred upon the applicant.

The adjacent non-industrial development will be screened from applicant's site by the Denryter Drain and existing vegetation. The requested variance would not be contrary to the spirit and intent of the Township Ordinance for this district; it would instead be consistent with the surrounding development and allow the applicant to use the site as zoned.

To substantiate the statements set forth herein, applicant will provide additional documentation prior to the Hearing on this matter, and at the Hearing, applicant will also provide expert testimony."

Bob Kirk, representative, was in attendance, and stated the property in question has been zoned industrial for many years and ahead of when the residential moved in there. The ordinance as written was enacted last April and in order to comply with this ordinance and put the doors in the back we would probably lose 30 of the 55 acres that we have for this development.

Jeff Rizzo, engineer for the site, presented a couple of conceptual layouts to the Board. He then reviewed the disadvantage of side entrance and front entrances versus the rear entrance. He also stated that by accommodating the residential you are creating another problem and are not solving anything.

John Secco, petitioner, stated that when the property was purchased it was done while the property was being ruled under the 100 foot setback requirement.

Chairman FLORENCE asked when the ordinance change took affect.

Jerome R. Schmeiser, Planning Consultant, stated it was a year to a year and a half ago.

John Secco, stated that when they purchased the property the value of the property and the value that we are being taxed at and the value that we are paying taxes on just yesterday was valued based on a different ordinance. Now, basically what your telling us is that fewer buildings, smaller buildings, that fine, but the value of the property is greatly dimensioned.

John Secco asked if he could cite one example of an industrial park in Metropolitan Detroit with side loading that is a nice park.

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John Secco stated they did not create the hardship. The zoning was there before we bought the property. The property was zoned light industrial, the residential property was there. We are not asking for a change in zoning, we are asking for proper use of the land, the way the planners who actually made the Master Plan in Macomb Township intended. If they didn't want the industrial buildings next to residential they shouldn't have zoned it that way.

Bob Kirk stated they have a practical difficulty in platting it this way for industrial use that we won't be able to market.

John Secco stated the line that was created between residential and industrial when you zone the property industrial and then you zone the property residential. The township drew the line.

Chairman FLORENCE read the letter of opposition dated September 12, 2005 from Anthony C. Zeolla and Heather Reynolds as follows:

"I oppose the variance from zoning ordinance as requested by Sims Road, LLC. Section 10.0347. Thank you."

Public Portion:

Mike Wiedbusch, 17519 Rocco Drive, stated that in all fairness they were not being fair to the residents who live there by saying we should sacrifice a door in the back of their building and to deal with the noise so the front of your commercial building looks nicer. I don't think your being fair to us for that. On the other hand, we shouldn't have to deal with the additional noise coming towards our home and the other thing to take into consideration is the trucks delivering and removing products from those buildings we are going to have headlights flashing at our houses and into our windows, which is not fair to us neither. As the ordinance stands I think you should deny the request.

Cliff Bara, 17463 Rocco, stated as far as keeping property values up, the property values of everybody that back up to the proposed site are not impacted by what the industrial street looks like. We care about what's in the back. That is what we see everyday and that's what we have to live with. The noise level will be increased by people leaving doors open, bays open, trucks pulling in, people standing outside taking smoke breaks and presses running in the background and noise all day long. The petitioner mentioned that residents want curb appeal, we don't want curb inside that development. We don't care about that. Were not in there, we don't live there everyday. If we end up granting a variance for something like this, someone else is going to do another development, there going to come in and ask for a variance and no one is going to understand why these guys got a variance past. The whole plan that we are talking about was rejected by the Planning Commission approximately four weeks ago because the plans are inadequate and questioned why we were here wasting everyone's time.



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**MOTION by SLOSSON seconded by POPOVSKI to close the public portion.**

**MOTION carried.**

Bob Kirk responded to the issue of the headlights by stating that there are screening walls that are required per the ordinance and with being industrial, they moved there after this was zoned industrial. He noted that he had set forth in his letter that there is a practical difficulty not an impossibility but I believe this is unreasonably burdensome. We are being deprived of a use of a traditional industrial subdivision, which is something that has not been created by our client. Its property that has been there, it's been industrial and within the last year the ordinance changed and we believe this requirement is unreasonable. One last item I think that you will have problems with lot splits in the event you have the 600 foot setback and the typical 200 to 300 foot depth of an industrial lot you are going to need at least 300 feet of frontage, so the minimum lot frontage in industrial is going to be 300 feet on these types of facilities.

Member SELVA asked if the plans were proposed as drawn or actual.

Jeff Rizzo stated the lots themselves are correct but the building footprint is a typical building that could fit on these lots.

Bob Kirk stated one of the alternatives what might actually make us do is to run a road along the back of their property line, and I don't think they want to do that.

Discussion of the Buckeye pipeline was held.

Jerome R. Schmeiser, Planning Consultant, stated that might not be a bad idea, the Buckeye pipeline easement is fifty feet wide and it the front of the proposed buildings are going to be so wonderful maybe the neighbors would rather look at them. The road would have to be seventy feet wide, then the greenbelt and wall and that would put the nearest building at 165 feet from their property line. It's not a bad idea at all given by Mr. Kirk.

**MOTION by SELVA to deny the variance.**

John Secco interrupted the proceeding by stating that typically when you a build a road you normally would like to build it so you utilize both sides of the road. If you build it and only utilize one side of the road its really not the most cost effective way to do it. He further went on to stat that you typically put a road down the center of the property just because you can use both sides of the property. If you put it on one side of the property your not fully utilize the property very well which would cause another difficulty to us by having to something unreasonable and difficult and being deprived of using our property properly. It is being created by something that is beyond our control. Its not granting us any special privileges because other industrial lots in the township comply. This was

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something created within the last year after we bought the property because of a condition that was created by the township. You've master planned industrial next to residential and now you are trying to correct that by taking it out on us and that not fair.

Chairman FLORENCE stated that there was motion on the floor and needed to proceed forward.

**MOTION was seconded by GALLAGHER to deny the variance request of Section 10.0347-Request to reduce the distance for door openings facing a residential area from 600 feet to 100 feet; Located on the south side of 23 Mile Road, ¼ mile west of Romeo Plank Road; Section 20; Sims Road, LLC, Petitioner. Permanent Parcel No. 08-20-100-018.**

**Member GALLAGHER denied the request indicating there was a better way to develop the property then set forth.**

**Member POPOVSKI concurred with the recommendation made. It's not going to prevent you from using your property as zoned. You have used words in your letter such as marketable, and we can argue that interpretation all night long. Everyone will have a difference interpretation. Based on the fact from the boards point of view you can still use the land as zoned without getting this variance approved.**

**MOTION carried.**

Bob Kirk asked to have the plans included as part of the file.

9. **VARIANCE FROM THE PROVISION OF THE ZONING ORDINANCE;**  
Permission to vary section: 10.0704b2 Request to allow an increase in the height of a residedntial structure from 25' to 26'6".  
Located 1/2 mile south of 26 Mile Road, east of Romeo Plank Road; Section 5;  
Russell Branham, Petitioner. Permanent Parcel No. 08-05-127-039.

Chairman FLORENCE read the findings and recommendation of September 8, 2005. They are as follows:

The petitioner is requesting allowance to provide for a height of a residential structure in an R-1 zone to be extended from 25' in height to 26'6".

The township is currently in the process of considering an amendment to the ordinance to allow for residential stuctures in an R-1 zone to be constructed not to exceed 28' in height. The Planning Consultant is recomending to the Township that such an amendment be approved.

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**RECOMMENDATION:**

It is recommended that the variance request be denied for the following reasons:

1. Compliance with the strict letter of the height requirement would not unreasonably prevent the ownership from using the property as zoned. Other residential structures planned in Macomb Township will be required to comply with the same height requirements which is evidence that the proper maximum height of structures would not be unnecessarily burdensome.
2. The granting of a variance as requested would give to the applicant an advantage or benefit not received by any other property owners in residential developments in Macomb Township. The other owners are or will be required to comply with the maximum height requirement. As a result the other property owners do not have the opportunity to make use of 1½' in structure height in the R-1 zone.

There is nothing unusual about the parcel in question that sets it apart from other parcels in area or in Macomb Township. There is nothing to prevent any part of the structure from being limited to 25' in height pursuant to Sec. 10.0704B of the zoning ordinance. For example, there are no significant grade differences or natural feature such as a stream or wetland to prevent full use of the parcel according to the ordinance as written.

3. The variance would amount to increasing the height by approximately 6%.

The following letter of explanation was submitted by the petitioner dated August 16, 2005 as follows:

"In the process of building my new home during my rough inspection I have been made aware that I am in violation of Ordinance 10.0704B2. At this time I have had all my rough plumbing, electrical and HVAC inspections. My home is bricked with the brick covering 80 percent of the home. Without this variance I would have to reconstruct my whole second floor.

The inspector has labeled the problem in that my first floor is one foot higher above final grade than noted on the permit. This is due to a basement height of 8'10" but with sewer lines down 8' this forced the house to be higher. I have been aware that there is a possible zoning change in process but it could still take some time. Waiting for this would leave me without a residence.

My home is identical to three others within 150 feet of it. With this, I was a little surprised to find out that I was in violation.

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In closing I am hoping that you will grant me this variance. My only other option would be to ask for approval with a condition that the new ordinance passes. If not then modification would have to be made to the home. After reviewing my plans I would hope that you would grant this variance, which would prevent me from reconstructing my home.”

**MOTION by GALLAGHER seconded by POPOVSKI to table the variance request to November 8, 2005 as requested by the petitioner’s letter dated September 13, 2005.**

**MOTION carried.**

10. VARIANCE FROM THE PROVISION OF THE ZONING ORDINANCE;  
Permission to vary section: 10.0345(3)A To allow the setback of a wall for an entrance sign from 15' to 0'. Section 10.0704d1. To reduce the street setback from 25" to 0'.  
Located on the northwest and southwest corners of the intersection of Via Bellagio and Romeo Plank; Section 6; Frank Mancini, Petitioner. Permanent Parcel No. 08-06-200-046.

Chairman FLORENCE read the findings and recommendation of September 8, 2005. They are as follows:

The petitioner is requesting allowance to provide that existing walls constructed as part of the entrance to the Villagio Subdivision to remain with 0 setback from Via Bellagio Drive.

**RECOMMENDATION:**

It is recommended that the variance request be denied for the following reasons:

1. Compliance with the strict letter of the setback requirement would not unreasonably prevent the ownership from using the property as zoned. Other residential developments planned in Macomb Township will be required to comply with the same setback requirements which is evidence that the proper setback would not be unnecessarily burdensome.
2. The granting of a variance as requested would give to the applicant an advantage or benefit not received by any other property owners in residential developments in Macomb Township. The other owners are or will be required to comply with the 25’ setback requirement. As a result the other property owners do not have the opportunity to make use of setback area.

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There is nothing unusual about the parcel in question that sets it apart from other parcels in area or in Macomb Township. There is nothing to prevent any part of the setback from being maintained 25' from the property line. For example, there are no significant grade differences or natural feature such as a stream or wetland to prevent full use of the parcel according to the ordinance as written.

The following letter of explanation was submitted by the petitioner dated August 24, 2005 as follows:

“Please be advised all required permits and Township SDA and Planning approvals have been received. It has now come to the attention of the Township that an ordinance setback has been violated. This was missed by developer, Planning Department and Township Engineer. All landscape plans approved by Township have been designed and installed per plan. We wish to have a variance to the ordinance for the entrance ways at Villagio be granted as built, designed and approved by Township. Granting this approval will allow the previous approved plan to keep its integrity.

Frank Mancini, petitioner, was in attendance and stated the variance came about from a discovery after previous submittals of Tentative, Final P, Landscape approval plan and building permits that were approved. This came about when we applied for our Final Plat to be approved. The undue hardship that we are going to or could incur will be that the landscape and the walls are completely done when this was discovered. This was part of our original landscape plan for both entrance ways that we have for Villagio. This is also causing undue hardship to myself besides all of the other purchasers who will be moving into the subdivision. This has been an unforeseen by all departments and ourselves as well.

Member GALLAGHER asked how it got this far.

Frank Mancini stated when the initial plans and design were submitted everything was encompassed as a whole. We have a 264 lot subdivision and have created something a little bit different that Macomb Township has not seen. The landscape plans, wall designs and details were included for that reason so everything was complete. We did come before the Township Board earlier for a stub street variance which was granted, because everyone was on the same concept to promote this as a unique subdivision. He further went on to explain how he felt the item was missed was that it was part of the overall approval. So when we got to that process after Tentative Preliminary Plat, Final Preliminary Plat and Landscape plan, receiving building permits, inspections, paying our fees everybody thought it was fine until there problems that occurred in other subdivisions, but were caught ahead of the construction and one that did proceed ahead on their own initiation. We are not trying to associate ourselves with anybody. We just thought what we had designed and done was done properly. Things happen and slip through and so we were hoping that because of what we have created here and what we

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are trying to keep is the integrity of the subdivision that this would be allowed and I don't know how it will be done, but that is why a variance was requested because it needs to be done that way to deviate from the ordinance.

Member GALLAGHER asked what portion was in the right-of-way.

A discussion was held regarding the construction and wall placement of the entrance walls.

Member SELVA asked about the line of sight for Romeo Plank and if that was part of this issue.

Jerome R. Schmeiser, Planning Consultant, stated that is the intention of the provision of the Ordinance that Mr. Mancini is requesting a variance. But, as a practical matter it is so far back from Romeo Plank Road, that it is not part of the clear vision zone. It is not in anyone's way as far as clear vision zones are concerned.

Frank Mancini stated that Lots 1 and 58 face the internal of the subdivision. There's not any driveways that come off that boulevard at all. Its all landscaped.

Public Portion: None.

**MOTION by SLOSSON seconded by SELVA to close the public portion.**

**MOTION carried.**

**MOTION by GALLAGHER to grant the variance of Section 10.0345(3)A-Request To allow the setback of a wall for an entrance sign from 15 feet to 0 feet. This probably is a practical difficulty for the fact that this Township has never seen anything like this before. It's too nice of thing to tear up. Again this Township has never seen nothing like this before.**

Colleen O'Connor, Township Attorney, asked if he wanted her opinion. She stated that legally its not a practical difficulty, but that's up for the Board to decide. Couldn't you tear it down and build it back up to what its suppose to be.

Frank Mancini stated that is what it was suppose to be. Everything that we did there from the stone work was cut to specifications. That is why we did not want to deviate and submitted these plans earlier and I do see the dilemma the Township has been put in. There are numerous walls throughout the community, not of this nature of course. We are trying to create something that we believe the Township lacks. To get to a point of being totally completed and then someone say I don't believe we can give this to you is where the sore spot hits for us. We understand the dilemma the community is in but, we

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believe the hardship is that we followed protocol. We did our inspections, we did what we were suppose to do.

Colleen O'Connor, Township Attorney, stated again, that it will be up to the Board to decide if there is a practical difficulty. But there is not a hardship or practical difficulty because the walls could have been put in the right place. Whether or not there is estoppel issue meaning should this Township be stopped from enforcing the ordinance because we approved it, is another issue for another court.

Member GALLAGHER withdrew his prior motion to grant the variance request.

**MOTION by SELVA seconded by SLOSSON to deny the variance request of Section 10.0345(3)A-Request to allow the setback of a wall for an entrance sign from 15 feet to 0 feet; Located on the northwest and southwest corners of the intersection of Via Bellagio and Romeo Plank; Section 6; Frank Mancini, Petitioner. Permanent Parcel No. 08-06-200-046. Lots 1 and 58 of the proposed Villagio Subdivision. The variance was denied based on the interest of consistency, the ordinance is what it is, and that is what we've been saying all night and that's what we say here every other month. There is some responsibility on the architect that drew it to know what the ordinance was as well. How it got this far I don't know. We've had issues like this before and there is other ways to address this. Lastly, we are emplaned to uphold the ordinances.**

**Member POPOVSKI added that if you really understand the jurisdiction of this Board you will understand why we are doing this. We can all agree it's a beautiful structure and its going to do amazing things for that area. But, the way the Zoning Ordinance is written we don't feel that's there been a practical difficulty shown that's been shown to this Board. There's other methods or remedies for you to pursue.**

**Opposed: GALLAGHER  
MOTION carried.**

Frank Mancini stated that Section 10.07041D1 was resolved through investigation.

11. VARIANCE FROM THE PROVISION OF THE ZONING ORDINANCE;  
Permission to vary section:  
Section 10.0330-Request to allow 2 principle structures on the parcel.  
Located on the southwest corner of 25 Mile and Garfield, excepting the immediate corner; Section 7; Joe VanHaverbeck, Petitioner. Permanent Parcel No. 08-07-200-012.

Chairman FLORENCE read the findings and recommendation of September 8, 2005. They are as follows:

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The petitioner is requesting permission to construct a new residence on a parcel that contains an older residence. It is the petitioner's intention to raze the older structures upon completion of the newer structure.

A note on the petitioner's site plan indicates that the petitioner has advised the Building Department that it is their intention to remove the older structure upon completion of the new building.

**RECOMMENDATION:**

It is recommended that the variance request be granted with the understanding that the action of the Board of Appeals will be recorded in Mt. Clemens and that a \$5,000 cash bond be posted assuring the Township that the older building will be razed within 90 days from the date of the certificate of occupancy of the newer house.

The following letter of explanation was submitted by the petitioner dated August 24, 2005 as follows:

"Residence located at 16580 25 Mile Road to be removed 180 day's or less after completion and issuance of certificate of occupancy for new residence address 16470 25 Mile Road. New home will be completed in the winter, would remove old residence 16580 25 Mile Road after spring thaw and weight restrictions are taken off roads."

Joe VanHaverbeck, representative, was in attendance and stated he realized the Board was looking at a 90 day limitation but the new house won't be completed till January. With the time frame we are looking at the wieght restrictions may or may not be in effect along with the frost laws.

Jerome R. Schmeiser, Planning Consultant, stated that he would have no problem with the request for 180 days.

**Public Portion:**

Joe Sturzik, 3099 Lakeside, stated he and his family had no objection to this request. They have been very good neighbors for many years along with being taxpayers for who knows how long. He also indicated that he was a messenger for Beatrice Stark that she had no objections to the request as well.

Jeff Johnson, 54870 Jack Drive, stated he was here tonight to support the request.

David Roland, 54894 Jack Drive, stated it would be reasonable to grant the request for the vairance. He has been a great neighbor to us and the intention to remove the other structure is true.



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Kim Hauschild, 54846 Jack Drive, stated she also supports the variance request. The Altermatts have been great neighbors and hope to have them there for a long time.

Tom Curran, 54798 Jack Drive, stated the Altermatts have been great neighbors and hope that they stay there as long as he does.

**MOTION by GALLAGHER seconded by SELVA to close the public portion.**

**MOTION carried.**

**The following resolution was offered by GALLAGHER and seconded by SELVA:**

**Whereas, it has been satisfactorily presented that special conditions prevail that would cause an unnecessary hardship if the request would be denied and that conditions exist that are unique to the property and the granting of the request would not confer special privileges for the petitioner that would be denied other similar properties, that the variance request would be consistent with the spirit and intent of the Macomb Township Zoning Ordinance No. 10 under the findings and facts herein set forth;**

**Now, therefore, be it resolved that pursuant to the action of the Board that Section 10.0330-Request to allow 2 principle structures on one parcel; Located on the southwest corner of 25 Mile Road and Garfield Road; Section 7; Jack and Darlene Altermatt, Petitioner. Permanent Parcel No. 08-07-200-012. The variance was granted with the understanding that the action of the Board of Appeals will be recorded in Mt. Clemens and that a \$5,000.00 cash bond be posted assuring the Township that the older building will be razed within 180 days from the date of the Certificate of Occupancy of the newer house.**

**MOTION carried.**

12. **VARIANCE FROM THE PROVISION OF THE ZONING ORDINANCE;**  
Permission to vary section: 10.0704B3 To allow a maximum of 7.94' rather than 5' above the lowest top of curb elevation on the adjacent roadway to the first floor and Section 10.0704E to allow a maximum coverage of a lot of 30.58% rather than 30% Located on West side of Cheltenham Drive, 1/3 mile South of 23 Mile Road; Section 22; Mary Ann Barnes, Petitioner. Permanent Parcel No. 08-22-103-007.

Chairman FLORENCE read the findings and recommendation of September 8, 2005. They are as follows:

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The petitioner is requesting variances to allow the construction of a residence on Lot 303 of the Buckingham Village No. 2. The variances involve the elevation of the structure's first floor from the curb and to be allowed to increase the size of the structure over 30% of the lot area.

Lot 303 of Buckingham Village No. 2 measures 75' x 129.93' and exceeds the minimum size of a lot in an R-1 zone.

**RECOMMENDATION:**

It is recommended that the variance request be denied for the following reasons:

1. Compliance with the strict letter of the elevation of the first floor and the lot area coverage requirement would not unreasonably prevent the ownership from using the property as zoned. Other residential structures planned in Macomb Township will be required to comply with the same elevation of the first floor and the lot area coverage requirement which is evidence that the proper requirements would not be unnecessarily burdensome.
2. The granting of a variance as requested would give to the applicant an advantage or benefit not received by any other property owners in residential developments in Macomb Township. The other owners are or will be required to comply with the elevation of the first floor and the lot area coverage requirement. As a result the other property owners do not have the opportunity to make use of additional height and square footage for the development of their property.

There is nothing unusual about the parcel in question that sets it apart from other parcels in area or in Macomb Township. There is nothing to prevent any part of the elevation of the first floor and the lot area coverage requirement from being maintained as required. For example, there are no significant grade differences or natural feature such as a stream or wetland to prevent full use of the parcel according to the ordinance as written.

The following letter of hardship was submitted by the petitioner dated August 26, 2005 as follows:

"Current grade on this lot as well as 4 others was made wrong. Grade goes from back to front of lot and this does not allow for any type of home to be built with deck height requirements. City engineer admits mistake but formality of ordinance requires ZBA approval. This particular home is a ranch and will not exceed overall height requirements just deck height will be exceeded.

Garage depth is forced to gain 2' due to the height of home. We are forced to put side turn steps in garage going in to the house. Doing this we will exceed the 30% house to lot ratio. Without exceeding the 30% ratio no full size vehicle would fit in the garage.

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Hardship: No home of any type could be constructed with the ordinance as written.”

Jerome R. Schmeiser, Planning Consultant, suggested the Chairman FLORENCE read the letter from Spalding DeDecker and Associates for the record.

Chairman FLORENCE read the letter dated September 13, 2005 from Spalding DeDecker and Associates as follows:

The petitioner is requesting a variance from the Zoning Ordinance (Article VII, Section 10.0704B3) in order to obtain a building permit. On the approved master grading plan (Buckingham Village No. 2), lots 123-128 & 300-303 were design with the rear brick ledges higher than the front brick ledges, with approximately 2/3 of the lot draining toward Cheltenham Drive and 1/3 draining toward the rear yards. This is due to the natural grade of that portion of the development. The higher rear brick ledges, which work well with the rear yard grades, cause the first floor elevations to be greater than (5) feet above the lowest top of curb grades along Cheltenham Drive. However, the Master Grading plan for Buckingham Village No. 2 was reviewed and accepted prior to the Board adopting an amendment to the aforementioned section of the zoning ordinance which specifies that “The elevation of the structure's first floor shall be limited to a maximum of five (5) feet above the lowest top of curb elevation on the adjacent roadway along the parcel's frontage. “

The main objective of this amendment was to safeguard against builders trying to force walkout basements where natural or proposed grades would not permit and to avoid incompatibility with surrounding houses. This is not the case with the aforementioned lots. The natural grade is dictating the higher fist floor elevation and the lots affected are 10 contiguous lots, where each will be compatible with the other. Therefore, we have not objection to the variance (Zoning Ordinance -Article VII, Section 10.0704B3) as requested.

If you have any questions regarding this matter, please contact our office at your convenience.

Jerome R. Schmeiser, Planning Consultant, stated that based upon the letter just read that they would change their opinion on Section 10.0704(B)(3), but of course can not recommend that the house exceed the maximum coverage of 30%.

Gary Marcial, a representative from Keystone Homes, was in attendance, and presented the Board with some additional handouts. He went explained the grade of the property and that they do need the lot coverage to build a 20 foot 6 inch garage which would the minimum garage that could be built.

Jerome R. Schmeiser, Planning Consultant suggested to build the home smaller.

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Gary Marcial stated that they tried to construct the house with less square footage but it still exceed the lot coverage due to the garage.

Member GALLAGHER stated the extra area being spoken about is in the garage.

Gary Marcial stated it was the actual house. If you were to look at the house from the actual ground level a major portion will be in the garage but whole outside of the front of the home will be elevated including the porch due the angle of the way the house is built.

Discussion was held on having a side entrance garage.

Public Portion: None.

**MOTION by SELVA seconded by POPOVSKI to close the public portion.**

**MOTION carried.**

**The following resolution was offered by SELVA and seconded by SLOSSON:**

**Whereas, it has been satisfactorily presented that special conditions prevail that would cause an unnecessary hardship if the request would be denied and that conditions exist that are unique to the property and the granting of the request would not confer special privileges for the petitioner that would be denied other similar properties, that the variance request would be consistent with the spirit and intent of the Macomb Township Zoning Ordinance No. 10 under the findings and facts herein set forth;**

**Now, therefore, be it resolved that pursuant to the action of the Board that Section 10.0704(B)(3)-Request to allow a maximum of 7.94 feet rather than 5 feet above the lowest top of curb elevation on the adjacent roadway to the first floor; Located on the west side of Cheltenham Drive, 1/3 mile south of 23 Mile Road; Section 22; Mary Ann Barnes, Petitioner. Permanent Parcel No. 08-22-103-007. The variance was made based on the letter from the Township Engineer dated September 12, 2005.**

**MOTION carried.**

**MOTION by GALLAGHER seconded by SLOSSON to deny the variance request of Section 10.0704(E)-Request to allow a maximum coverage of a lot of 30.58% rather than 30%; Located on the west side of Cheltenham Drive, 1/3 mile south of 23 Mile Road; Section 22; Mary Ann Barnes, Petitioner. Permanent Parcel No. 08-22-103-007. The variance was denied since there is no practical difficulty here. You can make a side entrance garage and variance would not be needed.**

**MOTION carried.**

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13. OLD BUSINESS

None.

14. NEW BUSINESS

None.

15. PLANNING CONSULTANTS COMMENTS

Jerome R. Schmeisr, Planning Consultant, stated there was a special meeting scheduled for September 27, 2005 and the next regular meeting was scheduled for November 8, 2005.

16. MOTION TO RECEIVE AND FILE ALL CORRESPONDENCE IN  
CONNECTION WITH THIS AGENDA

**MOTION by GALLAGHER seconded by SLOSSON to receive and file all  
correspondence.**

**MOTION carried.**

**ADJOURNMENT**

**MOTION by POPOVSKI seconded by SLOSSON to adjourn the meeting at 9:14  
P.M.**

**MOTION carried.**

Respectfully submitted,

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Brian Florence, Chairman

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Dawn Slosson, Secretary

Beckie Kavanagh, Recording Secretary

BK